

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA JEAN ELKINS

Claimant

VS.

APOLLO HAIR SYSTEMS

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,004,489

ORDER

Respondent and its insurance carrier appealed the January 7, 2005 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is the third preliminary hearing held in this claim, which was initially filed for bilateral foot injuries. In the January 7, 2005 Order, the Judge found claimant fell on January 1, 2004, causing symptoms in her left shoulder. The Judge further held the accident was a natural consequence of the original work injury as the fall was caused due to the lack of feeling in claimant's feet. Accordingly, Judge Barnes granted claimant medical benefits for both her left shoulder and her neck, which several physicians believe is responsible for her shoulder symptoms.

Respondent and its insurance carrier contend Judge Barnes erred. In their application for review, respondent and its insurance carrier stated the issue on this appeal was "[w]hether claimant's current symptomatology arises out of and in the course of her employment with respondent."¹

Neither respondent and its insurance carrier nor claimant filed a brief with the Board. But at the January 4, 2005 preliminary hearing, respondent and its insurance carrier argued claimant failed to prove a relationship between the January 2004 fall and her neck. Accordingly, it appears the only issue now before the Board is whether claimant is entitled to receive medical treatment for her current symptoms, which may emanate from the neck.

¹ Notice of Appeal of a Preliminary Hearing Order at 1 (filed Jan. 21, 2005).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes the January 7, 2005 preliminary hearing Order should be affirmed.

Following an earlier preliminary hearing, the Judge determined claimant had originally injured her feet while working for respondent. Additionally, the Judge determined claimant sustained an additional accidental injury on January 1, 2004, when she fell due to the numbness in her feet. Following that hearing, the Judge granted claimant medical treatment for her left shoulder as the Judge concluded the January 2004 accident was a natural consequence of the original work injury.

But claimant's doctors now believe the symptoms in claimant's shoulder region, which began after her January 2004 fall, emanate from her neck. Accordingly, the Judge modified her earlier order that granted claimant medical treatment for the left shoulder to include her neck.

At this juncture, the Board adopts the Judge's findings and conclusions. Accordingly, claimant should receive medical treatment for her neck along with medical treatment to her left shoulder, which was bruised in the fall.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.²

WHEREFORE, the Board affirms the January 7, 2005 preliminary hearing Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of March 2005.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a.